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Case No. _____

Supreme Court, U.S.
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In The

UNITED STATES SUPREME COURT

FOR THE OCTOBER TERM, 1991

Floyd Beam and Elaine Beam,
Petitioners,

vs.

Commissioner of Internal Revenue
Respondent.

Petition For Writ Of Certiorari To The Ninth Circuit Court of Appeals

PETITION FOR WRIT OF CERTIORARI

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66

QUESTIONS PRESENTED

1. Whether or not the appeals court has made conflicting determinations of law in the application of the Paperwork Reduction Act ("PRA") regarding the following governmental agencies; The Forest Service, Bureau of Land Management, and the Internal Revenue Service?

2. Whether or not 26 U.S.C. §§6001, 6011 and 6012 are explicit statutory requirements or is there a necessity for rules and regulations, to be prescribed by the Secretary, to implement these statutes set forth by Congress?

3. Whether or not the Public Protection Clause, 44 U.S.C. §3512, of the Paperwork Reduction Act is a bar to the imposition of penalties and interest by the Internal Revenue Service, due to the failure of an individual to respond to a collection of information request, because regulations and instructions issued by the IRS failed to display OMB control numbers?

4. Whether or not the holding of the Ninth Circuit Court of Appeals in Beam, supra, overruled the holding of this Court in Dole v. United Steelworkers of America, 494 U.S. 26, 110 S.Ct. 929, 933, 108 L.Ed. 23 (1990) contravening case law at Thurston Motor Lines, Inc. v. Jordan K. Rand, Ltd., 460 U.S. 533, 535, 103 S.Ct. 1343, 75 L. Ed.2d 260 (1983)?

5. Do the Instructions, essential for completing Form 1040, U.S. Individual Income Tax, and Form 2555, Foreign Earned Income, constitute "information collection request/requirement" as defined in 44 U.S.C. §3502(3),(4), (11), (17), 5 C.F.R. §1320.7(c)(1)(2) and (3) and 5 C.F.R. §1320.7(d)?

6. Whether or not an individual is excused from filing a return and from liability for the taxes, due to the ambiguity of the regulations and the forms, required to be filed pursuant to 26 C.F.R. §§1.6012-1 and 1.1-1?

PARTIES TO THE PROCEEDINGS

The parties to the proceedings in the Court of Appeals for the Ninth Circuit were Floyd W. Beam and Elaine M. Beam and The Commissioner of Internal Revenue.

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Case No. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

FLOYD W. BEAM and ELAINE M. BEAM,

PETITIONERS

vs.

UNITED STATES OF AMERICA

RESPONDENT

PETITIONER FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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1. Pursuant to the provisions of **28 U.S.C. §1257** and the **United States Supreme Court Rule [SCR] No. 10.1(c)**, the Petitioners, Floyd W. Beam and Elaine M. Beam, in Propria Persona, respectfully requests that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit entered in this proceedings on the 9th day of March, 1992.

OPINIONS BELOW

2. The opinions of the Ninth Circuit are reprinted in Appendix B to this petition and reported as indicated below:

Beam v. C.I.R., No.90-70602, "MEMORANDUM - NOT FOR

PUBLICATION " affirming the decision of Tax Court, with the foot note, "This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3", was issued on March 5, 1992 and filed on March 9, 1992 (per Hall, O'Scannlain, and Leavy).

JURISDICTION

3. This Court's jurisdiction is invoked under the provisions of **United States Supreme Court Rule (U.S.C.R.) No. 10(c)** and **Title 28 U.S.C. §§1254(1) & 1257.**

CONSTITUTIONAL PROVISIONS, STATUTES, RULES, REGULATIONS, FORMS AND INSTRUCTIONS INVOLVED

4. CONSTITUTIONAL PROVISIONS:

(a) Article III, Section 2, Paragraphs 1 and 2 of the United States Constitution:

> [1] "[T]he judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; - to all Cases affecting Ambassadors, or other public Ministers and Consuls;..., to Controversies to which the United States shall be a Party;...and between a State, or the Citizens thereof,..."
>
> [2] "... [i]n all other Cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make."

5. STATUTES:

(a) **Judicial Act of 1789 of the First Congress, Session 1, Cap. 20 (XX), Section 35**

"[S]ect. 35. And be it further enacted.

> "That in all courts of the United States, the parties may plead and manage their own causes personally or by the assistance of such counsel or attorneys at law as by the rules of the said courts respectively shall be permitted to manage and conduct causes therein. ..."

Approved, September 24, 1789.

(b) This case involves 44 U.S.C. §§3501 et seq., 26 U.S.C. §§6001, 6011, 6012, 5 C.F.R. §§1320.1 et seq., and 26 C.F.R. §§1.6001-1, 1.6011.-1 and 1.6012-1.

(c) The opinion of the court of appeals in Beam was filed March 9, 1992.

STATEMENT OF THE CASE

On Aug. 4, 1988, Floyd and Elaine Beam received a "Notice of Deficiency." Petitioners timely filed a petition with The United States Tax court. The decision of Tax court was filed June 19, 1990. Petitioners then filed a timely notice of intent to appeal the Tax court decision, and timely filing their appeal with the Ninth Circuit Court of Appeals on 16 January 1991. The judgement of the appeals court, affirming the decision of Tax court, was filed March 9, 1992. It is from the judgement of the appeals court that Petitioners submit this Petition for Writ of Certiorari.

Petitioners asserted that penalties and interest imposed by the Internal Revenue Service ("IRS") are barred due to the failure of the Instructions for Forms 1040 and 2555 to display Office of Management and Budget ("OMB") control numbers.[1] A failure of the agency to comply with the requirement allows the individual to invoke the Public Protection Clause at 44 U.S.C. §3512. Petitioners further held that the regulations written pursuant to the statutes, making a collection of information request are required to display such numbers or they are to be displayed as an appendix to the regulations.

Petitioners maintained that to complete a lawful filing they would have to lie. The regulations written pursuant to 26 U.S.C. §6012 require the filing of Form 1040. However, the requirement to file pivots on the crucial point of liability for the income taxes under subtitle A; IRC §6012(a), "Returns with respect to income taxes under subtitle A shall be made..." Petitioners argued that the regulations and forms prescribed pursuant to 26 IRC §1 would out of necessity need to be consulted. In doing so Petitioners discovered that the regulations required a filing of

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[1] "'Display' means: In the case of forms, questionnaires, instructions and other written information collection requests individually distributed to potential respondents, to print the OMB control number ... in the upper right hand corner of the front page of the request." 5 C.F.R. §1320.7(f)(1); see also, 44 U.S.C. §3507(f): "An agency shall not engage in a collection of information without obtaining from the Director [Office of Management and Budget ("OMB")] a control number to be displayed upon the information collection request."

required a filing of Form 2555, entitled, "Foreign Earned Income". On the front of the Form 2555 appears the instruction, "attach to the front of Form 1040". Petitioners surmised that a complete filing required both forms to be filed, based on the facts that §6012 imposed no tax, and that §1 imposed the individual income tax. Petitioners further surmised, since they had received no "Foreign Earned Income", they were relieved from the duty of filing. Without income one cannot be a taxpayer. The Tax court and the court of appeals failed to address this issue.

Petitioners asserted the judgment of the Tax court was flawed and should be reversed pursuant to the Public Protection Clause of the PRA (44 U.S.C. §3512).

The Ninth Circuit rejected Beam's argument holding:

> "We need not decide in this case whether the Form 1040 displayed a valid OMB control number. This circuit recently decided that even if the Internal Revenue Service ("IRS") failed to comply with the Act, that did not preclude the taxpayer from being penalized for failing to file a tax return. United States v. Hicks, 947 F.2d 1356, 1359 (9th Cir. 1991); accord United States v. Bentson, 947 F2d 1353 (9th Cir. 1991). The taxpayer in Hicks. like the taxpayers here, argued that the IRS"s failure to comply with the Act with respect to Form 1040 and the instruction booklet, would bar the imposition of fines for taxpayer's violations of the Internal Revenue Code ("IRC"). Id. Although the court in Hicks specifically held that the public protection provision of the Act, 44 U.S.C. §3512, constituted no defense to prosecution under 26 U.S.C. id. at 1359-60, we conclude the reasoning applies equally to this case."

The circuit court also erred in its statement,

> "Taxpayers in this case, as in Hicks, cannot escape the penalties for failure to follow the requirements set forth by Congress in the IRC by attempting to invoke the protections of an agency regulation."

The Paperwork Reduction Act is not an agency regulation.

REASONS FOR GRANTING THE WRIT

1. The Ninth Circuit of Appeals has made conflicting determinations of law in the application of the Paperwork Reduction Act ("PRA") regarding the following government agencies, The Forest Service, Bureau of Land Management, and the Internal Revenue Service.

The Ninth Circuit has inappropriately applied a standard of "explicit statutory requirement": and in so doing made contradictive determinations of law regarding the enforcement of the Paperwork Reduction Act (PRA), nullifying the Act and overruling the holding of this Court in Dole v. Steelworkers, 494 U.S. 26, 110 S.Ct. 929, 933, 108 L.Ed.2d 23 (1990), that tax forms must display OMB control numbers. The Ninth Circuit Court of Appeals used the decision of United States v. Hicks, 947 F.2d 1356 (9th Cir. 1991) to make its holding in Beam v. C.I.R., No. 90-70602, Unreported Memorandum.

The court's decision in Hicks, supra, and therefore in Beam, supra, rests on the premise, that even if the IRS's forms, rules and regulations are subject to the provisions of the PRA, failure of the IRS

to comply with said provisions of said Act does not negate the requirement placed on the person to provide the requested information, nor prevent the imposition of penalties on said person if the requested information is not given.

In Hicks, supra, id. 1359 the court states,

> "Where an agency fails to follow the PRA in regard to an information collection request that the agency promulgates via regulation, at its own discretion, and without express prior mandate from Congress, a citizen may indeed escape penalties for failing to comply with the agency's request. See, e.g., United States v. Hatch, 919 F.2d 1394 (9th Cir. 1990); United States v. Smith, 866 F.2d 1092 (9th Cir. 1989)." Hicks, supra id 1359. "But where Congress sets forth explicit statutory requirement that the citizen provide information, and provides statutory criminal penalties for failure to comply with the request, that is another matter. This is a legislative command, and not an administrative request. The PRA was not meant to provide criminals with an all-purpose escape hatch."

Mr. Hicks was convicted of willful failure to file a return, 26 U.S.C. § 7203. In the case of Petitioners, no criminal charges or convictions of the Internal Revenue Code (IRC) are in question.

The court held that the statutes and regulations applicable in Hicks, supra and Beam, supra are congressionally mandated by virtue of the standard of "explicit statutory requirement", and are not subject to the provisions of the PRA. In citing Smith, supra, and Hatch, supra, the court implies that the statutes and regulations applicable in said cases

were not mandated by Congress, therefore were subject to the provisions of the PRA.

2. 26 U.S.C. §§6001, 6011 and 6012 are explicit statutory requirements, however, there is a necessity for rules and regulations, to be prescribed by the Secretary, to implement these statutes set forth by Congress.

Petitioners assert that the court has erred in its analysis, as is shown in the following comparison of 26 U.S.C. §§6001, 6011, 6012, and 16 U.S.C. §551. Comparison of the statutes will show an equal congressional "statutory requirement" applies in all cases.

A review of 26 U.S.C. §§6001, 6011 and 6012(a) and 16 U.S.C. §551 shows that without the prescribed rules and regulations, as the different department Secretaries from time to time may make, there could be no implementation of the congressionally enacted statutes.

Section 6001 (1986):

> "Every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns and comply with such rules and regulations as the Secretary may from time to time prescribe. Whenever in the judgement of the Secretary it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary deems sufficient to show whether or not such person is liable for tax under this title." (emphasis added)

26 U.S.C. §6001 is explicit as to the duties and authority of the Secretary. "Every person liable" could not make a determination as to what books, records, statements, returns he/she is required to make or keep, by reading the Code section, without resorting to the rules and regulations prescribed by the Secretary. This leads Petitioners to conclude that the actions of the Secretary are so central to the enforcement of the IRC that no implementation of the express congressional mandate can be said to exist without the Secretary's action. This conclusion is confirmed by Section 6011:

> "When required by regulations prescribed by the Secretary any person made liable for any tax imposed by this title, or for the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary. Every person required to make a return or statement shall include therein the information required by such forms or regulations." (emphasis added)

26 U.S.C. §6011 speaks for itself: there is no enforcement power without rules and regulations being prescribed by the Secretary. Section 6012(a) is no more explicit than §§6001 and 6011:

> "Returns with respect to income taxes under subtitle A shall be made by the following: (1)(A) Every individual having for the taxable year gross income which equals or exceeds the exemption amount, except that a return shall not be required of an individual..."

The section also lists general categories of persons exempt. The reference to subtitle A of the Code is not explicit since subtitle A of the Code covers six chapters including 1 through 1516.

The requirements of §6001, 6011 and 6012 cannot be categorized as "explicit statutory requirements," due to the necessity of the rules and regulations prescribed by the Secretary. Without said rules and regulations prescribed by the Secretary, the statutes are like fruit trees that have been rendered barren.

The court believes that the rules and regulations being enforced in Hatch, supra, and Smith, supra, are rules and regulations in pertinent part,

> "...written without express mandate from Congress, and as such a citizen may indeed escape penalties for failing to comply with the agency's request." Hicks, supra Id. 1359.

The statutory and regulatory provision that Mr. Hatch was convicted of failing to comply with is 16 U.S.C. §§551 (1984), 36 C.F.R. §261.101(a). Mr. Smith was charged and convicted with failure to file a Plan of Operations with the Forest Service pursuant to 36 C.F.R. §228.4 (1984). In both, Hatch, supra, and Smith, supra, there is a statutory requirement implemented by rules and regulations.

> "The Secretary of Agriculture shall make provisions for the protection against destruction by fire and depredations upon public forests and national forests which

> may have been set aside or which may be hereafter set aside under the provisions of section 471 of this title, and which may be continued; and he may make such rules and regulations and establish such service as will insure the objects of such reservations, namely, to regulate their occupancy and use to preserve the forests thereon from destruction; and any violation of the provisions of this section, sections 473 to 478 and 479 to 482 of this title or such rules and regulations shall be punished by a fine of not more than $500.00 or imprisonment for not more than six months, or both. Any person charged with the violation of such rules and regulations may be tried and sentenced by the United States magistrate specially designated for that purpose by the court by which he was appointed, in the same manner and subject to the same conditions as provided for in §3401(b) to (e) of title 18." 16 U.S.C. §551. (emphasis added).

Petitioners assert that there is not a whit of difference between the explicit statutory requirement in 26 U.S.C. §§6001, 6011, and 6012 and 16 U.S.C. §551. The court in Hicks, supra, Id. 1359, felt that age of the statute was an exception to the PRA in that "the provision of the Tax Code under which Hicks was convicted predates the PRA by over 25 years". The Act of Congress which brought to life 16 U.S.C. §551 is over eighty years old, which they ruled subject to the PRA.

The opening provision of 16 U.S.C. §551, states, "The Secretary of Agriculture shall make provisions..." This is no less of a prior mandate from Congress than 26 U.S.C. §6012(a). In structuring 16 U.S.C. §551, Congress used the terminology, "... and he may make such rules and regulations..." This is substantially similar to the language used by

Congress, expressing its intent, to authorize the Secretary of the Treasury or his/her delegate to make rules and regulations pursuant to the implementation of 26 U.S.C. §6001, 6011, and 6012.

The court, taking from Hicks, supra, states in Beam, supra, Id. at 3:

> "Further, Congress provided statutory penalties in the event a citizen should fail to comply with a legislative command. Id. Taxpayers in this case, as in Hicks, cannot escape the penalties for failure to follow the requirements set forth by Congress in the IRC by attempting to invoke the protection of an agency regulation." (emphasis added)

Unquestionably, 16 U.S.C. contains a "legislative command" as does 26 U.S.C. §6012. The command to file a return is not clear without the regulations, just as it is unclear as to what action one might commit to warrant a $500.00 fine or six months imprisonment or both, pursuant to 16 U.S.C. §551, without the regulations.

3. The Ninth Circuit Court of Appeals by its holding has nullified the Public Protection Clause, 44 U.S.C. §3512, of the Paperwork Reduction Act from being a bar to the imposition of penalties and interest by the IRS due to the failure of an individual to respond to a collection of information request, because regulations and instructions issued by the IRS failed to display OMB control numbers. Further, the court of appeals overruled the holding of this Court in Dole v. United Steelworkers of America, 494 U.S. 26, 110 S.Ct. 929, 933,

108 L.Ed. 23 (1990) contravening case law at Thurston Motor Lines, Inc. v. Jordon K. Rand, Ltd., 460 U.S. 533, 535, 103 S.Ct. 1343, 75 L. Ed.2d (1983)?

Is the Paperwork Reduction Act nothing more than an agency regulation? Certainly, the regulations promulgated pursuant to the PRA are as constraining on a government agency as those regulations written pursuant to the IRC are constraining upon the public. Petitioners conclude that the Ninth Circuit is excusing the IRS from obeying the PRA.

In the Hicks, supra, id. 1359, the court takes the "explicit statutory requirement" a step further.

> "The IRS, like any federal agency, must comply with the PRA and, in particular, must display OMB control numbers on its tax return forms and on its regulations. See Dole v. Steelworkers, 494 U.S. 26, 110 S.Ct. 929, 933, 108 L.Ed.2d.23 (1990)(tax forms are typical of the information requests subject to the PRA). But even assuming without deciding that the IRS failed to comply with the PRA here, its failure does not prevent Hicks from being penalized." Hicks, supra, id 1359. (emphasis added)

This Court may find that the appeals court's position is correct in a criminal case. See 44 U.S.C. §3518 (c)(1), (A); "Except as provided in paragraph (2), this chapter does not apply to the collection of information--(A) during the conduct of a Federal criminal investigation or prosecution, or during the disposition of a particular criminal matter."

The case at hand contains no charges nor convictions of any IRC criminal provisions. The Petitioners assert that if said holding is affirmed in this, a civil case, then the PRA becomes eviscerated.

The courts have recognized that a tax return form to be a collection of information request, subject to the PRA. However, the court in Hicks, supra, id. 1359, states, "But even assuming without deciding that the IRS failed to comply with the PRA here, its failure does not prevent Hicks from being penalized." Applying this reasoning to a non-criminal case, only one conclusion can be drawn. The citizen can be penalized for non-compliance regarding the information collection requirement even if the non-compliance is due to the failure of the IRS to comply with the PRA. Such reasoning destroys the public protection clause of the PRA. 44 U.S.C. §3512:

> "Notwithstanding any other provisions of law, no person shall be subject to any penalty for failing to maintain or provide information to any agency if the information collection request involved was made after December 31, 1981, and does not display a current control number assigned by the Director, or fails to state that such request is not subject to this chapter."

Further to affirm the holding, would make non-effectual 44 U.S.C. §3518 (a), which reads as follows:

> "Except as otherwise provided in this chapter, the authority of an agency under any other law to prescribe policies, rules, regulations, and procedures for Federal

information activities is subject to the authority conferred on the Director by this chapter."

To accept the position that statutory required collection of information requests are not subject to the PRA, but the forms are, would exclude rules and regulations written pursuant to a statute. This would have the effect of exempting the IRS along with all other government agencies from the provisions of the PRA. Such a position is diametrically opposed to the "explicit statutory requirement" of the PRA as affirmed by Fed. Reg. March 31, 1983, pg. 13667 when it states,

> "It is not possible to argue that OMB clearance authority is confined to forms and similar instruments. The key terms defining jurisdiction of the Act-- "collection of information" and "information collection request"--are both defined expressly to include "reporting and recordkeeping requirements" in addition to "written report forms" and application forms." 44 U.S.C. §3502(4),(11).
>
> "Many reporting requirements are enforced by means of forms, but other reporting requirements and virtually all recordkeeping requirements are imposed by other means, including oral surveys, guidelines, directives, and --most significantly--regulations." (emphasis added)

26 U.S.C. §§6001, 6011, and 6012 are recordkeeping and collection requirements, (no tax is imposed by these sections), enforced both by regulations and forms, Fed. Reg. March 31, 1983, pg. 13667,

> "The only way all reporting and recordkeeping requirements can be covered by the Act is to cover these other methods for the collection of information, including regulations. An exemption of regulations would result in

> a large and unwarranted loophole in the Act--a loophole including all forms published in regulations, virtually all recordkeeping requirements, and most reporting requirements not involving a format set by the agency. Such a result would fly in the face of the announced congressional intention to eliminate virtually all exemptions from coverage in the old Federal Reports Act, S. Rep. No. 96-930, at 13 (Indeed, since reporting and recordkeeping requirements were reviewed by OMB and GAO under the Federal Reports Act, the contrary interpretation would actually create new exemptions from coverage and thus weaken--not strengthen--the Federal Reports Act.)" (emphasis added)

The IRS was an agency exempt under the old Federal Reports Act. The exemption was revoked by the enactment of the Paperwork Reduction Act of 1980.

Petitioners assert the necessity of rules and regulations to be prescribed by the Secretary for enforcement of the statutes. Said rules and regulations, if they are a collection of information request or requirement, are subject to the provisions of 44 U.S.C. §3501 through 3520 and the rules and regulations pursuant thereto. Though the collection of information may be mandated by statute, it is still subject to OMB review and approval,

> "OMB shall determine whether the collection of information, as submitted by the agency, is necessary for the proper performance of the agency's functions. In making this determination, OMB will take into account the criteria listed in sec., 1320.4(b), and will consider whether the burden of the collection of information is justified by its practical utility. In addition: (1) OMB will consider necessary any collection of information specifically

> mandated by statute or court order, but will independently assess any collection of information to the extent the agency exercises discretion in its implementation"; 5 C.F.R. sec., 1320.4 (c),(1).

A collection request mandated by statute or Court Order, must display an OMB control number. However, OMB will not assess the necessity of the collection. On the other hand if regulations are written pursuant to statute, and the agency exercises discretion in its emplementation, OMB has the authority to independently assess the request or requirement for information. The requirement for OMB approval on a collection of information mandated by statute is implicit in 5 C.F.R. 1320.4,

> "Each agency shall ensure that collections of information required by law or necessary to obtain a benefit, and which are submitted to nine or fewer persons, inform potential respondents that the collection of information is not subject to OMB review under the Act." (emphasis added)

If the request is to ten persons or more the "collection of information required by law" is required to display an OMB control number. The absence of an OMB control number, when required, does not invalidate the law as stated in 5 C.F.R. §1320.5(b),

> "The absence of a control number on a collection of information requirement does not, as a legal matter, invalidate such requirement; however, its absence will alert the public that either the agency has failed to comply with applicable legal requirements for the

collection of information or the collection of information has been disapproved."

How are these opposing purposes reconciled? As noted, the legal requirement is not invalidated. However no penalty can be imposed upon a person for failure to comply with the information collection request/requirement if the request does not display a currently valid OMB control number. See 44 U.S.C. §3512; 5 C.F.R. §1320.5 (1988). The lack of a displayed OMB control number on or in a collection of information request/requirement can be remedied. The Forest Service and the Bureau of Land Management remedied the problem that arose in Smith, supra, and Hatch, supra, simply having the Director of OMB assign OMB control numbers and displaying said numbers in the appropriate regulations and on the prescribed forms. The statutory requirement wasn't changed as to what is expected of the public, using public lands. The law was, however, enforced as to an agency's authority to require and request a collection of information from said public.

4. The Instructions are essential for completing Form 1040, U.S. Individual Income Tax, and Form 2555, Foreign Earned Income, and constitute an "information collection request/requirement" as defined in 44 U.S.C. §3502(3),(4),(11),(17), 5 C.F.R. §1320.7(c)(1)(2) and (3) and 5 C.F.R. §1320.7(d).

Petitioners, in their appeal to the Ninth Circuit, asserted the necessity of the instructions for the different tax forms to display an OMB control number. The court addressed the issue inadequately in the following manner:

> "The taxpayer in Hicks, like the taxpayer here, argued that the IRS's failure to comply with the Act with respect to Form 1040 and the instruction booklet, would bar the imposition of fines for taxpayer's violations of the Internal Revenue Code ("IRC"). Id. Although the court in Hicks specifically held that the public protection provision of the Act, 44 U.S.C. §3512, constituted no defense to prosecution under 26 U.S.C. §7203, id. at 1359-60, we conclude the reasoning applies equally to this case." Beam, id. at 3.

The court's asserted reasoning is seriously flawed by reason of the following:

> "44 U.S.C. sec. 3504(c)(3)(C), (c) "The information collection request clearance and other paperwork control functions of the Director shall include--(3) ensuring that all information collection requests--(C) contain a statement to inform the person receiving the request why the information is being collected, how it is to be used, and whether responses to the request are voluntary, required to obtain a benefit, or mandatory;"

Appearing on the face of the Form 1040 are the words "For the Privacy Act and Paperwork Reduction Act Notice see the Instructions". The required notice, (44 U.S.C. §3504 (c)(3)(C)), is contained within the Instruction Booklet for Form 1040. This alone is enough to require the Instructions to display an OMB control number.

5 C.F.R. sec., 1320.7 (c)(1),

> "A 'collection of information' includes the use of written report forms, application forms, schedules, questionnaires, reporting or recordkeeping requirements, or other similar methods. Similar methods may include contracts, agreements, policy statements, plans, rules or regulations, planning requirements, circulars, directives, instructions, bulletins, requests for proposal,..." (emphasis added)

The above regulation is written pursuant to the congressional mandate in 44 U.S.C. §§3501 through 3520. It was specifically written pursuant to 44 U.S.C. §3502 (4) (A), (B), of the Act.

> "the term 'collection of information' means the obtaining or soliciting of facts or opinions by an agency through the use of written report forms, application forms, schedules, questionnaires, reporting or recordkeeping, or other similar methods calling for either--
> (A) answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons, other than agencies, instrumentalities, or employees of the United States; or
>
> (B) answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes."

Further the Instructions are a "burden" as defined at 44 U.S.C. 3502(3);

> " the term 'burden' means the time, effort, or financial resources expended by persons to provide information to a Federal agency."

Time and effort are expended in learning about the law and the form. Such knowledge is given by the Instructions pertaining to the applicable form of return. It could be asserted that with a knowledge of the rules

and regulations the form/return could be complete without the Instructions. But what person knows all the rules and regulations relating to the form/return and what kind of burden would be put on the public if the Instructions did not exist? The Instructions give a synopsis of the rules and regulations, and by so doing fall within the purview of the OMB.

Petitioners, could not accurately complete the Form 1040 without the accompanying Instructions. In absence of a prescribed for the IRS, at 26 C.F.R. §1.6011-2(b), has made provision to make a report of income without said Form. With instructions, but no form, Petitioners could make a return, providing all the required information. This fact also affirms that the instructions are a collection of information request, required to display an OMB control number.

5. The individual is excused from filing a return and from liability for the taxes due to the ambiguity of the regulations and the forms required to be filed pursuant to 26 C.F.R. §1.6012-1 and 26 C.F.R. §1.1-1.

I.R.C. §6012, as held in Hicks, supra, as shown by the Instructions, and as enforced by the IRS, is the statute that requires the filing of Form 1040. This requirement to file such a return is applicable only if a person is liable for the tax, "with respect to the income tax under subtitle A". This statement confirms that no tax is imposed by 26

U.S.C. §6012. Said section imposes only the collection of information to be placed on Form 1040, which is to be attached to the back of Form 2555, infra. Petitioners could not, by reading 26 U.S.C. §6012 or any regulations written pursuant thereto determine, if any, the amount of tax they may be liable for. Section 6012 by referencing 26 U.S.C. §1 mandates Petitioners to refer to said section in order to determine any tax liability that they may have.

The IRS, by rules, regulations, prescribed by the Secretary pursuant to the statutory mandate of Congress, requires that returns be made on prescribed forms. See 26 U.S.C. §6011; 26 C.F.R. §§ 1.6011-1, 601.104(a). The regulation cited earlier, 26 C.F.R. §1.6011-2(b), allowing a taxpayer to file a tentative return, a return made on a non-prescribed form, requires that said tentative return be supplemented by a return made on the proper form. Petitioners, raised the following question in their appeal; "What is the proper Form"? The court failed to address this issue, relying instead on its decision in Hicks, supra, to answer all issues. The question is an important question for the following reasons:

(1) It is the law that a return be made on the required/prescribed form.

(2) Said forms are prescribed by the Secretary and set forth in the regulations.

(3) The required/prescribed forms are by law a collection of information request.

(4) Being a collection of information request the form must display an OMB control number.

(5) The OMB control number must be contained within the text of the regulation or displayed in an appendix pertaining to the pertinent regulations.

(6) The IRS has chosen to display the OMB control numbers for the regulations and forms at 26 C.F.R. §602.101. The OMB control numbers are listed in a manner corresponding to the appropriate regulation section number, for example 26 C.F.R. §1.1-1 is assigned OMB number 1545-0067 (Form 2555- Foreign Earned Income). Matching the different section numbers for regulations written pursuant to 26 U.S.C. §6012, there are no less than 14 different OMB control numbers corresponding to 14 forms. There are three OMB control numbers corresponding with 26 C.F.R. §1.6012-1. This confirms that forms are prescribed pursuant to regulation. It also confirms that regulations are written pursuant to "explicit statutory requirement". The forms are thus a statutory requirement, and returns must be made on forms prescribed by regulation made pursuant to statutory mandate. Petitioners concluded that only research into the statutes could reveal the prescribed/required forms that would satisfy statutory requirements upon them.

It is the responsibility of the individual to determine what returns he/she is required to file. This determination is made by consulting the Code, regulations, Instructions and forms. If the regulation imposing the tax shows that only one form is to be filed and the individual has no income as described on that form, the individual is relieved of the duty to file.

Using the list at 26 C.F.R. §602.101, Petitioners determined that Form 2555 was the only prescribed/required form to be filed to fulfill the requirement of showing income at 26 C.F.R. §1.1-1. Form 2555 contains on its face the instruction that said form is to be attached to the front of Form 1040 showing that the ruling form if Form 2555. and that Form 1040 is only a supplemental form. Petitioners affirm their position, that they could not be required to file a Form 1040 at §6012 without filing Form 2555, which they could not file having no foreign earned income. Petitioners maintain they are not required to file Form 1040, because the OMB control number 1545-0074 was not assigned to 26 C.F.R. §1.1-1 and OMB control number 1545-0067 was not assigned to 26 C.F.R. §1.6012-1. In other words for the requirement to file a required/-prescribed form to be applicable, the regulation must show the assigned OMB control number, thus identifying the prescribed form. Such regulation may, as shown in parts of 26 C.F.R. §602.101, display more than one OMB control number. In listing of the OMB control numbers for

the regulations written pursuant to 26 U.S.C. §6012 petitioners found the following which further confirms their position:

(1) 26 C.F.R. §1.6012-2, corresponds to IRC §6012(2), "Every corporation subject to the tax under subtitle A;" (emphasis added) This section shows OMB control number 1545-0067 (Form 2555). However, IRC §6012(2) must be read in conjunction with IRC §6012(a), "Returns with respect to taxes under subtitle A shall be made by the following;" Based on this provision, Petitioners conclude that the Form 2555 is the return required to be filed for income taxes imposed under subtitle A.

(2) 26 C.F.R. §6012-3, corresponds to IRC §6012(3), returns for fiduciaries, Said regulations show OMB control number 1545-0067.

OMB control number 1545-0067 is the only number assigned to this section by regulation. The required form in this case is Form 2555, as indicated by the listing at 26 C.F.R. §602.101, this is the form prescribed to be filed at 26 C.F.R. §1.1-1 which imposes the income tax. Petitioners, had no foreign earned income. Petitioners, assert that the tax imposed does not apply to them.

CONCLUSION

The "explicit statutory requirement" expressed at 26 U.S.C. §§6001, 6011, and 6012 contained no more explicitness than that of 16 U.S.C. §551. All of the mentioned statutes require the writing of rules and regulations in order to enforce the congressional mandate set forth

in the statutes. The court in its holding in Hicks, supra and Beam, supra, contradict its holding in Hatch, supra, and Smith, supra. By making the contradictive decision, the court, has set the IRS above the congressional provisions of the PRA. The court has nullified the Paperwork Reduction Act, with its standard of "explicit statutory requirement", in its zeal to protect the IRS. The court has by its holding in Beam, supra, overruled this Court, in Dole, supra.

The court has ignored the provisions of an Act of Congress. It held that the Instructions for the prescribed forms are not required to display an OMB control number. The court held that the Instructions are not, by definition, a collection of information request, disregarding the plain language of 44 U.S.C. §§3504(c)(3)(C), 3502 (4)(A), (B), and 3502(3); 5 C.F.R. §1320.7 (c)(1).

There is no question as to what form is required to be file, as indicated by the listing of assigned OMB control numbers at 26 C.F.R. §§1.6012-1, and 1.1-1. There is no requirement to file Form 1040 unless liability exists for the taxpayer with respect to the income tax imposed under subtitle A. Said tax at 26 C.F.R. §1.1-1 calls for filing of Form 2555, entitled "Foreign Earned Income", Petitioners had no such income relieving them of the requirement to file said returns.

For the foregoing reasons, Petitioners respectfully submits that their petition for certiorari should be granted, and this Court should

settle the important federal questions as to whether or not there has been conflicting decisions rendered by the Ninth Circuit Court of Appeals in the application of the provisions of the Paperwork Reduction Act. Whether or not the public protection clause of the PRA is a defense against the imposition of penalties and interest by the IRS, when the regulations and instructions at issue display no OMB control number. Whether or not the court, when it held that it made no difference whether the forms and regulations of the IRS complied with the PRA, overruled this Court's holding in Dole v United Steelworkers of America, 494 U.S. 26, 110 S.Ct. 929, 933, 108 L.Ed.2d 23 (1990), that such forms must display OMB control numbers. What constitutes a lawful filing, when the Code section imposing the tax requires the filing of a form requiring information on foreign earned income and is to be attached to the front of Form 1040 required by a section of the Code imposing no tax?

For all the forgoing reasons, Petitioners respectfully submit that this petition for certiorari should be granted, and this court settle the important questions raised above.

RESPECTFULLY SUBMITTED THIS 5th day of June, 1992.

Floyd W. Beam,
in Propria Persona

Elaine M. Beam,
in Propria Persona

APPENDIX "A"

LETTER REQUESTING PUBLICATION

Floyd W. Beam
340 Q Street
Springfield, Or. 97477
(503) 726-0555

May 5, 1992

Cathy A. Catterson, Clerk
U.S. Court of Appeals for the Ninth Circuit
121 Spear Street
P.O. Box 193939
SanFrancisco, Ca. 94119-3939

Dear Ms. Catterson:

Pursuant to Ninth Circuit rule 36-3 and 36-4 please publish the affirmed decision of Circuit Judges, Hall, O"Scannlain and Leavy of N0. 90-70602; Tax Ct. No. 28837-88.

The reason for publishing the above referenced case is that the court has deviated from their normal procedure and the case may be published at the request of the petitioner whenever the court deviates from its normal procedure. The Court has not given any final judgment.

This request is done in a timely manner to be published.

Thank you,

Floyd W. Beam

APPENDIX "B"

N0. 90-70602, TAX CT. NO. 28837-88

MEMORANDUM* - NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FLOYD W. BEAM; ELAINE M. BEAM,
Appellants,

v.

COMMISSIONER OF INTERNAL REVENUE
Respondents.

Appeal from a decision of the

United States Tax Court

Submitted March 5, 1992**

Portland, Oregon

Before: HALL, O'SCANNLAIN, and LEAVY, Circuit Judges.

Floyd and Elaine Beam appeal the tax court's decision that they were liable for the additions to tax determined by the Commissioner of Internal Revenue ("Commissioner") for failure to file income tax returns,

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously finds this case suitable for submission of the record and briefs and without oral argument. Fed. R. App. P. 34(a) and Ninth Circuit Rule 34-4.

APPENDIX "A"

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FLOYD W. BEAM; ELAINE M. BEAM, Petitioners-Appellants, v. COMMISSIONER INTERNAL REVENUE SERVICE,	No. 90-70602 Tax Ct. No. 28837-88
MARGARET E. WARDEN, Petitioner-Appellant, v. COMMISSIONER INTERNAL REVENUE SERVICE, Respondent-Appellee.	No. 90-70666 Tax Ct. No. 10167-89 ORDER

Before: Hall, O"Scannlain, and Leavy, Circuit Judges.

The appellants' request for publication is DENIED.

26 U.S.C. § 6651(a),[1] for failure to pay income tax, 26 U.S.C. §§ 6653(a)(1) and (a)(2), and for failure to pay estimated tax, 26 U.S.C. § 6654. We have jurisdiction under 26 U.S.C. § 7482, Internal Revenue Code of 1986, and we affirm.

On appeal, taxpayers do not challenge the additions to tax, or the determination of the actual amounts of penalties owed. Rather, taxpayers contend they are not liable for the additions to tax determined by the Commissioner on the ground that the Form 1040, the federal individual income tax return, does not conform with the requirements set forth in the Paperwork Reduction Act of 1980, 44 U.S.C. §§ 3501-3520 ("Act"). Specifically, taxpayers argue that they are not liable for the penalties because the Form 1040 does not display a valid Office of Management and Budget ("OMB") control number, and therefore, it does not comply with the Act. Taxpayers raise only questions of law, which this court reviews de novo. See United States v. McConney, 728 F.2d 1195, 1201 (9th Cir.) (en banc), cert. denied, 469 U.S. 824 (1984).

We need not decide in this case whether the Form 1040 displayed a valid OMB control number. This circuit recently decided that even if the Internal Revenue Service ("IRS") failed to comply with the Act, that did not preclude the taxpayer from being penalized for failing

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[1] Unless otherwise indicated, all section references are to the Internal Revenue Code of 1954, as amended and in effect for the year in issue.

to file a tax return. United States v. Hicks, 947 F.2d 1356, 1359 (9th Cir. 1991); accord United States v. Bentson, 947 F.2d 1353 (9th Cir. 1991).

The taxpayer in Hicks, like the taxpayers here, argued that the IRS's failure to comply with the Act with respect to Form 1040 and the instruction booklet, would bar the imposition of fines for taxpayer's violations of the Internal Revenue Code ("IRC"). Id. Although the court in Hicks specifically held that the public protection provision of the Act, 44 U.S.C. § 3512, constituted no defense to prosecution under 26 U.S.C. § 7203, id. at 1359-60, we concluded the reasoning applies equally to this case. In enacting the IRC, Congress set forth "explicit statutory requirements that the citizen provide information." Id. at 1359. Further, Congress provided statutory penalties in the event a citizen should fail to comply with its legislative command. Id. Taxpayers in this case, as in Hicks, cannot escape the penalties for failure to follow the requirements set forth by Congress in the IRC by attempting to invoke the protections of an agency regulation.

The tax court's determination that Floyd and Elaine Beam were liable for the Commissioner's additions to tax pursuant to 26 U.S.C. §§ 6651(a), 6653(a)(1) and (a)(2), and 6654 are affirmed.

AFFIRMED.

APPENDIX "C"

T. C. Memo. 1990-304

UNITED STATES TAX COURT

FLOYD W. AND ELAINE M. BEAM, Petitioners v.
COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 28837-88. Filed June 19, 1990.

William P. Koontz, for the petitioners.

Catherine J. Caballero, for the respondent.

MEMORANDUM FINDINGS OF FACT AND OPINION

GERBER, Judge: Respondent, by means of a notice of deficiency dated August 4, 1988, determined a deficiency in petitioner's 1981 income tax of $39,752, plus additions to tax under section 6651(a)(1)[1] of $7,950, section 6654 of $3,046, section 6653(a)(1) of $,1988, and section 6653(a)(2) in an amount to be computed as 50 percent of the interest due on any resulting deficiency. Prior to trial, the parties stipulated to the amount of petitioners' income[2] for 1981, and

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[1] Unless otherwise indicated, all section references are to the Internal Revenue Code of 1954, as amended and in effect for the year in issue, and all Ruie references are to this Court's Rules of Practice and Procedure.

[2] Petitioners had filed a 1981 Form 1040 which had zeros or word "None" or "Object-self incrim[ination]" on each line of the return. Respondent, by means of a bank deposits and expenditures analysis determined the amount of petitioners income for 1981. After the case was calendared for trial, petitioners provided documentation regarding their income and deductions 1981. Now the

respondent agreed to many of the deductions claimed prior to trial by petitioners. The issues remaining for our consideration are:

1) Whether the period for assessment of petitioner' 1981 income tax and additions to tax had expired at the time respondent mailed the notice of deficiency;

2) Whether respondent failed to comply with certain regulations issued under the Paperwork Reduction Act of 1980, and if so, whether such failure would have an effect upon any income tax deficiency that may be due from petitioner;

3) Whether petitioners have substantiated their entitlement to 1981 deductions for depreciation and other expenses concerning a motorcycle, rental expenses concerning an automobile, and depreciation and interest expenses relating to rental property in Davenport, Washington;

4) Whether petitioners have shown that their basis in property located in Seattle, Washington, should be increase by $10,000 representing the cost of improvements to that property;

5) Whether petitioners are subject to the additions to tax under §§ 6651(a)(1), 6653(a)(1) and (a)(2), and 6654; and

6) Whether petitioner Elaine Beam is an innocent spouse within

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parties have agreed upon the amount of income, and respondent has agreed to some of the deduction items claimed by petitioners.

the meaning of section 6012(e).

FINDINGS OF FACT

The parties entered into a stipulation of facts, with attached exhibits, all of which are incorporated by this reference. At the time of the filing of their petition, Floyd W. Beam and Elaine M. Beam were husband and wife, who resided in Springfield, Or.

During 1981, petitioners operated an insurance agency. Petitioner Floyd Beam was a self-employed insurance agent and petitioner Elaine Beam worked as a secretary as the agency. As part of her office responsibilities, Mrs. Beam routinely accepted client's cash premium payments and, in turn, wrote checks for those payments to the insurance companies involved.

On August 10, 1982, both petitioners signed a 1981 Federal Form 1040. Instead of supplying the information requested on the Form 1040, petitioner Floyd Beam filled in the blanks with the words "Object-self incrim[ination]" and "None" or "0". On the form, petitioners reported their taxable income and tax liability to be zero. They also reported that they made no estimated payments on their 1981 tax liability. Mrs. Beam asserts that she did not "totally" review the return when her husband told her that he had completed the return and that she should sign it, she just looked to where her signature was called for and signed. The Form 1040 that petitioners signed bears a valid Office of Management and

Budget (OMB) control number--1545-0074--assigned pursuant to the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501 et seq., Pub. L. 96-511, 94 Stat.2812.

Respondent received petitioners' 1981 Form 1040 at the Ogden, Utah, Service Center on October 25, 1982. There is no explanation for the time that elapsed between the date petitioners signed the return (August 10, 1982) and the date respondent received it (October 25, 1982). Prior to trial, the parties agreed upon most of the items of petitioners' income, deductions, and credits for 1981, as set forth below.

For 1981, petitioners received the following income:

Business income	$46,162
Interest income	3,329
Capital gains	18,422[3]
"Ordinary" income	11,263[3]
TOTAL	$79,1762

Petitioners also received $27,425 in distributions from a Keogh Plan.

Petitioners are entitled to claim the following business expenses for 1981:

Depreciation	$ 2,125
Office supplies and postage	353
Taxes	363
Travel and entertainment	1,948
Vehicle expense	3,702
Parking expense	9 see next page

[3] These items represent gains arising from petitioners' sale of an insurance agency in Kirkland, Washington.

Miscellaneous labor	2,558
Other items	9,936
Additional cash paid out	337
Home office expenses	1,076
TOTAL	$22,407

For 1981, petitioners are entitled to moving expenses of $2,753 and the following itemized deductions:

Medical insurance premiums	$ 1,138[4]
Other medical and dental expenses	973[4]
Real estate taxes	959
General sales taxes	684
Other taxes	347
Mortgage home interest	1,448
Credit and charge card interest	29
Other interest expenses	117
Cash contributions	1,499
Miscellaneous education expense	13
TOTAL	$7,207

Additionally, for their 1981 taxable year, petitioners are entitled to a bad debt of $1,860; a rental loss of $3,374; and an ordinary loss of $46,190 from "Northwest Petroleum Partnership."

Respondents further agrees that petitioners are entitled to a tax credit of $65 for contributions to candidates for public office in 1981. Petitioners may also utilize investment tax credits of $849 relating to "U-Bake Pizza" and $1,949 relating to the Northwest Petroleum Partnership. Petitioners' share of excess intangible drilling costs from Northwest

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[4] The medical insurance premiums and the other medical and dental expenses are subject to a 3 percent adjusted gross income limitation.

Petroleum Partnership was $32, 338 in 1981 and constitutes a tax preference item.

OPINION

Petitioners' initial argument is that the period for assessment of the 1981 deficiencies had expired before respondent's issuance of the statutory notice of deficiency. Petitioners, however, failed to properly raise this issue in accord with the rules of this Court. It is a basic requirement that all issues to be litigated must be set forth in the petition. Rule 34(b)(4). Prior to trial, a petitioner may move for leave to amend their petition to raise a new issue. Petitioners did not seek to amend their petition prior to trial. An issue that is not raised in the petition may be tried by the express or implied consent of the parties. In such cases, the Court, upon motion, may allow amendment to the petition as is necessary to raise a new issue and to cause the petition to conform to the proof. Rule 41(b)(1). Here, however, petitioners did not raise their limitations claim until they submitted their trial memorandum. They did not seek to amend the petition to raise the limitations issue, nor did they make a limitations argument at trial. The limitations issue has not been properly raised, and we are not compelled to address it. Rollert Residuary Trust v. Commissioner, 80 T.C. 619, 636 (1983), affd. on other issues 752 F.2d 1128 (6th Cir. 1985).

If petitioners had properly placed the limitation on assessment

(statute of limitations) argument in issue, based upon the facts in the record, they would have prevailed. If the document filed by petitioners could properly be considered a return,[5] it was not filed before August 19, 1982, the date petitioners signed the return. Respondent's notice of deficiency was issued and/or mailed August 4, 1988, less than 6 years after filing of the return. Under § 6501(e), if a taxpayer's return has income omitted in an amount greater than 25 percent of the gross income shown on the return, the limitations period is extended to a period of 6 years following the filing of the return. Here, petitioners failed to report any gross income. They now have conceded that they received substantial gross income. Obviously they omitted more than 25 percent of the amount of gross income from their return--that is, zero gross income. Accordingly, respondent mailed a notice of deficiency prior to the expiration of the 6-year period within which an assessment could have been made.

Petitioner's principal argument is that respondent may not collect the taxes and additions to tax at issue because respondent has failed to

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[5] Despite the uninformative responses, respondent has treated petitioners' 1981 Form 1040 as a return. See, however, United States v. Long, 618 F.2d 74 (9th Cir, 1980); but cf. Lee v. Commissioner, T.C. Memo 1986-294. If the document submitted by petitioners were not a return, then there would be no limitation on the period for assessment with respect to petitioners' 1981 taxable year. Their liabilities might instead be assessed and collected at any time. § 6501(c)(3).

comply with certain regulations issued pursuant to the Paperwork Reduction Act of 1980, 44 U.S.C. § 3516. These regulations provide that "An agency shall not engage in a collection of information without obtaining Office of Management and Budget (OMB) approval of the collection of information and displaying a currently valid OMB control number * * *." 5 C.F.R. § 1320.4 (1985). The regulations further provide that "no person be subject to any penalty for failure to comply with any information collection request if the request does not display a currently valid OMB control number * * *." 5 C.F.R. § 1320.5(a); see 44 U.S.C. §§ 3507(f) and 3512.

Petitioner Floyd Beam stated that he has undertaken an extensive study of the tax laws. He asserts that he understands that section 1 of the Internal Revenue Code imposes a Federal income tax upon him. He apparently further understands that § 1,1-1, Income Tax Regs., explains and implements § 1. He has reviewed the references made to section 1.1-1, Income Tax Regs., in the OMB Control Number tables set forth at 26 C.F.R. § 602.101, Statement of Procedure Rules. The reference in those tables for §1,1-1 does not include a reference to OMB number 1545-0074, which is the OMB control number displayed on his Form 1040. Petitioner concludes that the OMB number on the Form 1040 is, accordingly, invalid, and he may not legally use it to compute his Federal income tax liabilities. Other regulations, however,

require him to use the Form 1040. Accordingly, he contends, the only course open to him was to file the Form 1040, providing self-incrimination objections and zero for the requested information.

Petitioners have confused the imposition of the Federal income tax, set forth in § 1 of the Internal Revenue Code and in § 1.1-1 of its accompanying regulations, with the duty to file a return, set forth in § 6001, 6011, 6012 of the Internal Revenue Code, together with their accompanying regulations.[6] These latter regulations require the "collection of information" on a Federal income tax return. They have been assigned an OMB number--1545-0074--as set forth at 26 C.F.R. § 602.101, Statement of Procedural Rules, and which in all respects appears valid. Petitioners have not shown any basis for holding that OMB number 1545-0074 (which is displayed on the 1981 Form 1040 as well as being assigned to the above regulations) is in any way valid.

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[6] The internal Revenue Service has obtained OMB approval of the process of collecting information through Federal income tax returns. The OMB has assigned number 1545-0074 to that process. § 602.101(c), Statement of Procedural Rules (26 C.F.R.). The process of collection of information is embodied and authorized in the regulations. The regulations include, inter alia, those relating to taxpayers' record keeping and reporting requirements (§ 1,6001-1, Income Tax Regs.), those relating to the duty of taxpayers to file Federal income tax returns (§ 1.6011-1, Income Tax Regs.), and those relating to persons required to file income tax returns (§ 1.6012-1). The OMB has assigned the number 1545-0074 to each of these regulations--1.6001, 1.6011, and 1.6012--as well as to many other regulations involving the collection of information.

Moreover, petitioners have not shown a reasonable fear of incrimination under these circumstances.

The filing of income tax returns in accordance with the then current statutory and regulatory provisions does not, per se, violate a taxpayer's privilege against self-incrimination under the Fifth Amendment. White v. Commissioner, 72 T.C. 1126, 1130 (1979). Petitioners in this case did not claim to be under criminal investigation for the taxable year in issue and, accordingly, their failure to file based upon a Fifth Amendment privilege is without merit. Wilkinson v. Commissioner, 71 T.C. 633, 638-639 (1979). To invoke the Fifth Amendment privilege, petitioners must be faced with substantial hazards of self-incrimination that are real and appreciable, and they must have reasonable cause to apprehend such danger. The privilege may not be used as a method of evading or avoiding a payment of lawful taxes. Edwards v. Commissioner, 680 F.2d 1268, 1270 (9th Cir. 1982); McCoy v. Commissioner, 696 F.2d 1234 (9th Cir. 1983), affg. 76 T.C. 1027 (1981).

Petitioners reliance upon United States. v. Smith, 866 F.2d 1092 (9th Cir. 1989), inappropriate. That case turned upon the fact that the Alaska Placer Mining Application and its governing regulations did not have an OMB number. Here, however, as we have shown--and as petitioners should have realized-- the Form 1040, and the regulations

governing it, did have a valid OMB number. Petitioners' "OMB-number" contentions provide no basis for relieving petitioners of their obligation to report and pay their income tax under the Internal Revenue Code.

Petitioners next urge that they are entitled to a number of deductions and credits that respondent has not allowed. Petitioners bear the burden of proving that the disallowances of deductions and credits are in error. Rule 142(a); Welch v. Helvering, 290 U.S. 111, 115 (1933). Their burden includes demonstrating that the claimed deductions and credits satisfy the appropriate statutory provisions. Deputy v. duPont, 308 U.S. 488, 493 (1940); New Colonial Ice. Co. v. Helvering, 292 U.S. 435, 440 (1934). In this regard, § 262 expressly denies a deduction for all "personal, living, or family expenses." § 162(a), however, allows a deduction for "all the ordinary and necessary expenses paid or incurred * * * in carrying on any trade or business."

We need not accept petitioner's self-serving testimony in determining whether they have met their burden of proof when they fail to present other probative evidence. Tokarski v. commissioner, 87 T.C. 74, 77 (1986). Petitioner Floyd Beam claims that the should be allowed to deduct, for 1981, depreciation and other expenses with respect to a Honda motorcycle. He has produced no documentary evidence showing that he owned such a motorcycle, and , even if he did, he has failed to demonstrate how much of the motorcycle's use, if any, was related to

business. The physical evidence he has produced (a few gas station receipts showing small purchases of gasoline) are inadequate to carry his burden. He has failed to establish entitlement to the motorcycle-related deductions.

Mr. Beam also claims entitlement to a rental expense deduction. He states that he rented an Oldsmobile automobile from Lacey Nursing Center, beginning in June or July of 1981. He has not, however, provided any records of rental payments, nor any rental contract. He has not produced any records that would substantiate the amount of claimed business use of the Oldsmobile. He offered only xeroxed copies of a temporary registration permit for a 1981 Oldsmobile registered in the name of Lacey Nursing Center. Those documents are not probative regarding the issue of deductible rental expenses. Mr. Beam's testimony as to the rentals paid for the Oldsmobile and the amount of its business usage is vague and self serving. Respondent allowed petitioners a vehicle expense deduction of $3,702 for business use of vehicles. Petitioners have not shown their entitlement to an automobile expense deduction in an amount greater than that already allowed by respondent.

Petitioners further argue that they are entitled to deduct depreciation and interest expenses for a house which Mr. Beam owned in a partnership with one Howard Hoskins. The house was allegedly a rental property. Petitioners have failed to provide any purchase contract,

any deed, any checks or receipts showing payment of interest, or any other documents that would substantiate petitioners' entitlement to depreciation deductions. The only documents offered in support of their claims are a handwritten amortization schedule drafted by Mr. Beam himself, and a portion of a tax return indicating that Mr. Beam was in partnership with Mr. Hoskins. We ascribe little weight to the amortization schedule, and the tax returns are not themselves proof of statements made therein. Halle v. Commissioner, 7 T.C. 245, 247-248 (1946), affd. 175 F.2d 500 (2d Cir. 1949). Mr Beam's testimony on these items was vague and self-serving. Petitioners have not established that they are entitled to the claimed depreciation and interest expenses on the Davenport, Washington rental.

Petitioners additionally argue that their basis in some Seattle real estate, which they sold in 1981, should have been increase by $10,000 to reflect claimed improvements made to the property. § 1001 provides that a taxpayer's basis in property is subtracted from the amount realized upon the sale of that property to determine the amount of gain or loss. § 1016 provides that the basis of property is increase for items chargeable to the capital account and reduced for depreciation. The parties have stipulated that petitioners incurred a capital gain of $,7807 on the 1981 sale of the Seattle property 1981. Their claimed $10,000 increase in basis would apparently eliminate the stipulated capital gain from the

sale of the property and provide, instead, a capital loss. The stipulation is binding on petitioners who have not shown that justice requires relief from their stipulation. Rule 91(e).

Petitioners, in fact, have failed to provide documentation that is, in any way, relevant to their basis in the property. The record does not contain documentary or probative evidence of the property's cost, ownership use, or prior depreciation allowances, if any. Petitioners' only offering on this issue is Mr. Beam's testimony, in which he recalls roughly the cost of improvements. In that testimony he recalled five items of improvements totalling $8,800 and then asserted that the improvements were worth "at least $10,000." The testimony is unconvining and wholly uncorroborated. As with the claimed deductions, the testimony fails to show that petitioners are entitled to the basis adjustment they seek.

Petitioners urge, however, that we make an estimate of the claimed improvements under Cohan v. Commissioner, 39 F.2d 540 (2d Cir. 1930). In some situations, where a taxpayer lacks the records necessary to fully substantiate claimed deductions, this Court may estimate the deductions. The Court may do so, however, only when it is convinced from the record that the taxpayer has incurred such expenses, "bearing heavily if it chooses upon the taxpayer whose inexactitude is of his own making." Cohan v. Commissioner, 39 F.2d at 544. Before we

may make such an estimation "there [must] be sufficient evidence to satisfy the trier m at least to amount allowed in the estimate was in fact spent or incurred for the stated purpose." Williams v. United States, 245 F.2d 559, 560 (5th Cir. 1957) (emphasis in original). Until the Court has that satisfaction from the record, relief to the taxpayer would be "unguided largesse." Williams v. United States, supra; Cohan v.Commissioner, supra; see Vanicek v. Commissioner, 85 T.C. 731, 742-743 (1985). Here again, petitioners have offered only their unsupported self-serving testimony, which is inconsistent with their stipulation. It fails to satisfy us that any addition to basis can be estimated and was, in fact, spent or incurred for the stated purpose. Therefore, we have found that the amount stipulated by the parties as capital gains is correct and deny petitioners' claim for increased basis.

Respondent also determined additions to tax under § 6651(a)(1), 6653(a)(1) and (2), and 6654. § 6651(a)(1) provides for an addition to tax of 5 percent per month, not exceeding 25 percent if the return is filed late. Petitioners may avoid the § 6651(a)(1) addition to tax by showing that the failure to file in a timely fashion was due to reasonable cause and not due to willful neglect. It is petitioners' burden to demonstrate that respondent's assertion of tax relating to § 6651(a)(1) is incorrect. Rule 142(a); see Clayden v. Commissioner, 90 T.C. 656, 677 (1988).

Here, the 1981 return was not signed or filed before August 10, 1982. Petitioners were required to file their return on or before April 15, 1982. § 6072. Their only defense for failure to file a timely return is their "OMB number" argument. We decline to accept that argument as constituting reasonable cause for failure to file their return in a timely fashion.

We also reject petitioners' attempt to find relief in Rev. Rul. 76-562, 1976-2 C.B. 430. That ruling provides that a return prepared and executed by respondent under § 6020(b) stops the running of the delinquency period for purposes of § 6651(a)(1). here, however petitioners have not shown that respondent executed a return under the provisions of § 6020(b). Nor have they shown that, if such a return was prepared, it was prepared and executed before they filed the Form 1040 at issue, which respondent has accepted as constituting a return. Accordingly, the addition to tax under § 6651(a)(1) is sustained.

§ 6653(a)(1) provides for an addition to tax if any part of any underpayment is due to negligence or intentional disregard of rules and regulations. Petitioners again have the burden of showing that these additions to tax do not apply. Marcello v. Commissioner, 380 F.2d 499, 507 (5th Cir. 1967), affg, a Memorandum Opinion of this Court. In this case, petitioners only argument seems to be their "OMB-number" defense. As noted above, however, that defense is inadequate. It does

not provide a reasonable basis for contending that it would have been illegal for petitioner to file a properly executed Form 1040 for 1981. See also Emmons v. Commissioner, 92 T.C. 341 (1989), affd.898 F.2d 50 (5th Cir. 1990) (filing untimely returns without an adequate and reasonable excuse or justification for the delinquent filing is sufficient for the imposition of the negligence addition). Accordingly, petitioners are subject to the additions to tax under § 6653(a)(1).

§ 6653(a)(2) provides that if the provisions for an addition to tax under § 6653(a)(1) are met, there shall also be added to the tax an amount equal to 50 percent of the interest payable with respect to the portion of the underpayment that is due to the negligent or intentional disregard of the rules and regulations. Because petitioners are liable for the additions to tax under § 6653(a)(1), they are liable for the additional interest under § 6653(a)(2), as well.

Respondent has also determined an addition to tax under § 6654. That provision addresses a failure to make timely estimated tax payments. It imposes additions to tax where the taxpayer's prepayments of tax, either through withholding or making estimated tax payments, do not equal a minimum amount of his liability as specified in the statute. The addition to tax under § 6654 is mandatory "unless the petitioner can place himself within one of the computational exceptions provided for in § (d) thereof." Grosshandler v. Commissioner, 75 T.C. 1, 20-21 (1980).

Petitioners have failed to show that they come within any of those exceptions. The addition to tax under § 6654 is sustained.

Petitioners finally urge that, if we find that they are subject to the taxes and additions to tax at issue, we should nevertheless hold that petitioner Elaine Beam is entitled to relief under the innocent spouse provisions of § 6013(e).

Under the terms of that section, in order to obtain relief, Mrs. Beam must show (1) that a joint return for the taxable year 1981 has been made, (2) that there is substantial understatement of tax attributable to "grossly erroneous items" of the other spouse, (3) that she did not know and had no reason to know of that substantial understatement when she signed the return, and (4) considering all the facts and circumstances it would be inequitable to hold her liable for the deficiency in income tax attributable to that substantial understatement.

A consideration of these elements shows that Mrs. Beam is not entitled to innocent spouse relief under § 6013(e). Initially, she has not shown that the understatement of tax at issue is attributable only to her husband. See § 6013(e)(2). Mrs. Beam worked at the insurance agency. At least some of the understated business income is attributable to her compensation. she has not shown otherwise. Moreover, she had reason to know of the understatement. She handled cash and checks at the Beam's insurance agency, and it is clear that she knew that the agency

had received substantial income in 1981. When Mrs. Beam signed the return, however, her husband had indicated that zero or self-incrimination responses were the only responses appropriate for computing and reporting their taxes--hers as well as his. The return thus would have given her reason to know of the substantial understatement of taxes on that return. It is no excuse that she failed to review the return she signed. As we stated in Bokum v. Commissioner, 94 T.C.__,__, (February 28, 1990) (slip op. at 35):

> "She cannot obtain the benefits of § 6013(e) by simply turning a blind eye to-by preferring not to know of-facts fully disclosed on a tax return, of such a numerical magnitude as would reasonably put her on notice that further inquiry would need to be made. * **. [She] undertook responsibilities when she signed the * * * joint tax return. She cannot escape these responsibilities by simply ignoring the contents of this tax return." (Cit. omitted.]

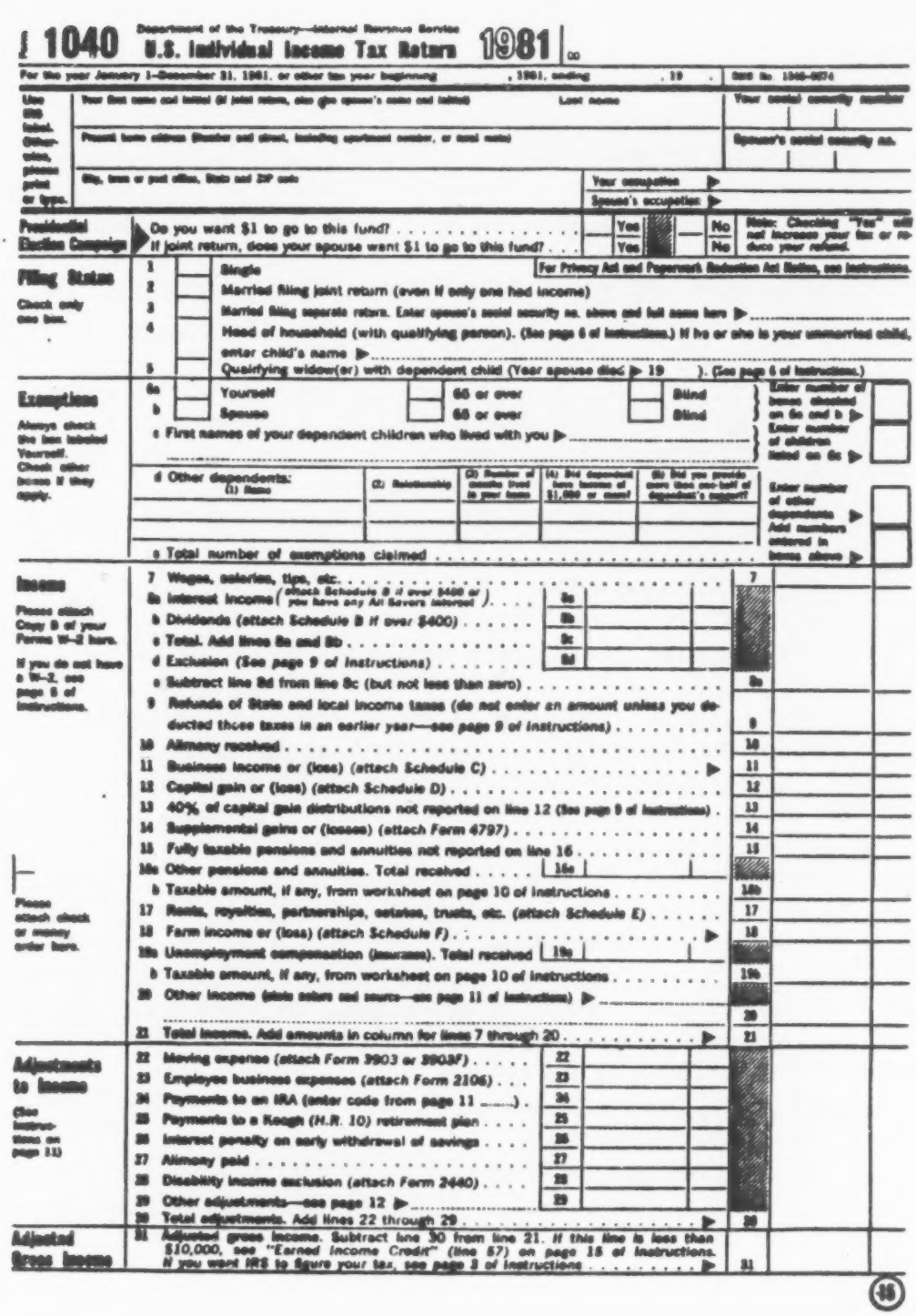
Under these circumstances, it is not "inequitable" to hold her liable for the tax and additions to tax. The return she signed reflects an inadequate response to her duty to report her tax liabilities correctly, and to pay them in a timely fashion.

Petitioner Elaine Beam is not entitled to relief under the innocent spouse provisions of § 6013(e_.

Because of concessions,

Decision will be entered under Rule 155.

APPENDIX "D"



Form 1040 Department of the Treasury—Internal Revenue Service U.S. Individual Income Tax Return 1981

For the year January 1–December 31, 1981, or other tax year beginning , 1981, ending , 19 . See No. 1040-0074

Use IRS label. Otherwise, please print or type.

Your first name and initial (if joint return, also give spouse's name and initial) Last name Your social security number

Present home address (Number and street, including apartment number, or rural route) Spouse's social security no.

City, town or post office, State and ZIP code Your occupation ▶ Spouse's occupation ▶

Presidential Election Campaign

Do you want $1 to go to this fund? Yes No

If joint return, does your spouse want $1 to go to this fund? Yes No

Note: Checking "Yes" will not increase your tax or reduce your refund.

Filing Status Check only one box.

For Privacy Act and Paperwork Reduction Act Notice, see instructions.

1 ☐ Single

2 ☐ Married filing joint return (even if only one had income)

3 ☐ Married filing separate return. Enter spouse's social security no. above and full name here ▶

4 ☐ Head of household (with qualifying person). (See page 6 of Instructions.) If the qualifying person is your unmarried child, enter child's name ▶

5 ☐ Qualifying widow(er) with dependent child (Year spouse died ▶ 19). (See page 6 of Instructions.)

Exemptions Always check the box labeled Yourself. Check other boxes if they apply.

6a ☐ Yourself ☐ 65 or over ☐ Blind

b ☐ Spouse ☐ 65 or over ☐ Blind

Enter number of boxes checked on 6a and b ▶

c First names of your dependent children who lived with you ▶ Enter number of children listed on 6c ▶

d Other dependents: (1) Name	(2) Relationship	(3) Number of months lived in your home	(4) Did dependent have income of $1,000 or more?	(5) Did you provide more than one-half of dependent's support?

Enter number of other dependents ▶ Add numbers entered in boxes above ▶

e Total number of exemptions claimed

Income Please attach Copy B of your Forms W-2 here. If you do not have a W-2, see page 5 of Instructions.

7	Wages, salaries, tips, etc.		7
8a	Interest income (attach Schedule B if over $400 or if you have any All Savers interest)	8a	
b	Dividends (attach Schedule B if over $400)	8b	
c	Total. Add lines 8a and 8b	8c	
d	Exclusion (See page 9 of Instructions)	8d	
e	Subtract line 8d from line 8c (but not less than zero)		8e
9	Refunds of State and local income taxes (do not enter an amount unless you deducted those taxes in an earlier year—see page 9 of Instructions)		9
10	Alimony received		10
11	Business income or (loss) (attach Schedule C)		11
12	Capital gain or (loss) (attach Schedule D)		12
13	40% of capital gain distributions not reported on line 12 (See page 9 of Instructions)		13
14	Supplemental gains or (losses) (attach Form 4797)		14
15	Fully taxable pensions and annuities not reported on line 16		15
16a	Other pensions and annuities. Total received	16a	
b	Taxable amount, if any, from worksheet on page 10 of Instructions		16b
17	Rents, royalties, partnerships, estates, trusts, etc. (attach Schedule E)		17
18	Farm income or (loss) (attach Schedule F)		18
19a	Unemployment compensation (insurance). Total received	19a	
b	Taxable amount, if any, from worksheet on page 10 of Instructions		19b
20	Other income (state nature and source—see page 11 of Instructions) ▶		20
21	Total income. Add amounts in column for lines 7 through 20		21

Please attach check or money order here.

Adjustments to Income (See Instructions on page 11)

22	Moving expense (attach Form 3903 or 3903F)	22	
23	Employee business expenses (attach Form 2106)	23	
24	Payments to an IRA (enter code from page 11)	24	
25	Payments to a Keogh (H.R. 10) retirement plan	25	
26	Interest penalty on early withdrawal of savings	26	
27	Alimony paid	27	
28	Disability income exclusion (attach Form 2440)	28	
29	Other adjustments—see page 12 ▶	29	
30	Total adjustments. Add lines 22 through 29		30

Adjusted Gross Income

31	Adjusted gross income. Subtract line 30 from line 21. If this line is less than $10,000, see "Earned Income Credit" (line 57) on page 15 of Instructions. If you want IRS to figure your tax, see page 3 of Instructions ▶	31

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APPENDIX "D"

Form 1040 (1981) Page 2

Tax Computation (See Instructions on page 12)

32a Amount from line 31 (adjusted gross income) 32a
32b If you do not itemize deductions, enter zero 32b
If you itemize, complete Schedule A (Form 1040) and enter the amount from Schedule A, line 41 . . .
Caution: If you have unearned income and can be claimed as a dependent on your parent's return, check here ▶ ☐ and see page 12 of the Instructions. Also see page 12 of the Instructions if:
- You are married filing a separate return and your spouse itemizes deductions, OR
- You file Form 4563, OR
- You are a dual-status alien.

32c Subtract line 32b from line 32a 32c
33 Multiply $1,000 by the total number of exemptions claimed on Form 1040, line 6e . . 33
34 Taxable Income. Subtract line 33 from line 32c 34
35 Tax. Enter tax here and check if from ☐ Tax Table, ☐ Tax Rate Schedule X, Y, or Z, ☐ Schedule D, ☐ Schedule G, or ☐ Form 4726 35
36 Additional Taxes. (See page 13 of Instructions.) Enter here and check if from ☐ Form 4970, ☐ Form 4972, ☐ Form 5544, or ☐ Section 72(m)(5) penalty tax 36
37 Total. Add lines 35 and 36 . . . . . ▶ 37

Credits (See Instructions on page 13)

38 Credit for contributions to candidates for public office . . . 38
39 Credit for the elderly (attach Schedules R&RP) 39
40 Credit for child and dependent care expenses (attach Form 2441) . 40
41 Investment credit (attach Form 3468) 41
42 Foreign tax credit (attach Form 1116) 42
43 Work incentive (WIN) credit (attach Form 4874) 43
44 Jobs credit (attach Form 5884) 44
45 Residential energy credit (attach Form 5695) 45
46 Total credits. Add lines 38 through 45 46
47 Balance. Subtract line 46 from line 37 and enter difference (but not less than zero) . ▶ 47

Other Taxes (Including Advance EIC Payments)

48 Self-employment tax (attach Schedule SE) 48
49a Minimum tax. Attach Form 4625 and check here ▶ ☐ 49a
49b Alternative minimum tax. Attach Form 6251 and check here ▶ ☐ 49b
50 Tax from recomputing prior-year investment credit (attach Form 4255) 50
51a Social security (FICA) tax on tip income not reported to employer (attach Form 4137) . . 51a
51b Uncollected employee FICA and RRTA tax on tips (from Form W–2) 51b
52 Tax on an IRA (attach Form 5329) 52
53 Advance earned income credit (EIC) payments received (from Form W–2) 53
54 Total tax. Add lines 47 through 53 . . . . . ▶ 54

06

Payments Attach Forms W–2, W–2G, and W–2P to front.

55 Total Federal income tax withheld 55
56 1981 estimated tax payments and amount applied from 1980 return . 56
57 Earned income credit. If line 32a is under $10,000, see page 15 of Instructions 57
58 Amount paid with Form 4868 58
59 Excess FICA and RRTA tax withheld (two or more employers) 59
60 Credit for Federal tax on special fuels and oils (attach Form 4136 or 4136–T) 60
61 Regulated Investment Company credit (attach Form 2439) 61
62 Total. Add lines 55 through 61 . . . . . ▶ 62

Refund or Balance Due

63 If line 62 is larger than line 54, enter amount OVERPAID . . . . . ▶ 63
64 Amount of line 63 to be REFUNDED TO YOU . . . . . ▶ 64
65 Amount of line 63 to be applied to your 1982 estimated tax . . . ▶ 65
66 If line 54 is larger than line 62, enter BALANCE DUE. Attach check or money order for full amount payable to "Internal Revenue Service." Write your social security number and "1981 Form 1040" on it. ▶ 66
(Check ▶ ☐ if Form 2210 (2210F) is attached. See page 16 of Instructions.) ▶ $

Please Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Your signature Date ▶ Spouse's signature (if filing jointly, BOTH must sign even if only one had income)

Paid Preparer's Use Only

Preparer's signature ▶ Date Check if self-employed ▶ ☐ Preparer's social security no.
Firm's name (or yours, if self-employed) and address ▶ E.I. No. ▶ ZIP code ▶

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APPENDIX "E"

Form **2555**

Department of the Treasury
Internal Revenue Service

Foreign Earned Income

▶ See separate instructions. ▶ Attach to front of Form 1040.

OMB No. 1545-0067

1989

Attachment Sequence No. **34**

For Use by United States Citizens and Resident Aliens Only

Your name | Your social security number

Foreign address (including country) | Your occupation

Name of employer ▶

Employer's address: U.S. ▶ / Foreign ▶

Employer is (check any that apply) ▶ ☐ A foreign entity ☐ A foreign affiliate of a U.S. company ☐ A U.S. company ☐ Self ☐ Other (specify) ▶

Enter earlier years (after 1981) that you filed Form 2555 to claim either of the exclusions ▶

If you chose to claim an exclusion in an earlier year (after 1981), have you revoked your choice? ☐ Yes ☐ No
If "Yes," give the type of exclusion and the tax year for which the revocation was effective ▶

Test under which you qualify to claim the exclusion(s) and/or deduction ▶ ☐ Bona fide residence test (Part I) ☐ Physical presence test (Part II)

Are you a U.S. citizen? ☐ Yes ☐ No

Did you maintain a separate foreign residence for your family because of adverse living conditions at your tax home? ☐ Yes ☐ No

If "Yes," give city and country of the separate foreign residence. Also show the number of days during your tax year that you maintained a second household at that address .....

List your tax home(s) during your tax year and date(s) established .....

Complete either Part I or Part II. If an item does not apply, write "NA." If you do not provide the information asked for, any exclusion or deduction you claim may be disallowed.

Part I **Taxpayers Qualifying Under Bona Fide Residence Test. (See Instructions.)**

1 Date bona fide residence began ..... ended .....

2 Kind of living quarters in foreign country ▶ ☐ Purchased house ☐ Rented house or apartment ☐ Rented room ☐ Quarters furnished by employer

3 Did any of your family live with you abroad during any part of the tax year? ☐ Yes ☐ No
If "Yes," who and for what period? ▶ .....

4a Have you submitted a statement to the authorities of the foreign country where you claim bona fide residence that you are not a resident of that country? (See Instructions.) ☐ Yes ☐ No

b Are you required to pay income tax to the country where you claim bona fide residence? (See Instructions.) ☐ Yes ☐ No
If "Yes" to 4a and "No" to 4b, you do not qualify as a bona fide resident. Do not complete the rest of Part I.

5 Complete the following for days present in the United States or its possessions during the tax year. (Do not include this income in Part III, but report it on Form 1040.)

Date arrived in U.S.	Date left U.S.	Number of days in U.S. on business	Income earned in U.S. on business (attach computation)	Date arrived in U.S.	Date left U.S.	Number of days in U.S. on business	Income earned in U.S. on business (attach computation)

6a State any contractual terms or other conditions relating to the length of your employment abroad .....

b State the type of visa under which you entered the foreign country .....

c Did your visa limit the length of your stay or employment in a foreign country? ☐ Yes ☐ No
If "Yes," attach explanation.

d Did you maintain a home in the United States while living abroad? ☐ Yes ☐ No
If "Yes," show address of your home, whether it was rented, and the names and relationships of the occupants .....

APPENDIX "E"

Part II Taxpayers Qualifying Under Physical Presence Test. (See Instructions.)

7 The physical presence test is based on the 12-month period from _____ through _____

8 Enter your principal country of employment during your tax year ▶ _____

9 Enter all travel abroad during the 12-month period shown on line 7, except travel between foreign countries that did not involve travel on, or over, international waters, or in, or over, the United States, for 24 hours or more. If the last entry is an arrival in a foreign country, enter the number of full days to the end of the 12-month period. If you have no travel to report during the period, write in the schedule below that you were physically present in a foreign country or countries during the entire 12-month period. (Do not include in Part III the income that you list here, but report it on Form 1040.)

Name of country (including U.S.)	Date arrived	Date left	Full days present in country	Number of days in U.S. on business	Income earned in U.S. on business (attach computation)

Part III All Taxpayers

Note: *On lines 10 through 14 enter all income, including noncash income, that you earned and actually or constructively received during your 1989 tax year for services you performed in a foreign country. If any of the foreign earned income received this tax year was earned in a prior tax year, or will be earned in a later tax year (such as a bonus), see the instructions. Do not include income from Part I, line 5, or Part II, line 9. Report amounts in U.S. dollars, using the exchange rates in effect when you actually or constructively received the income.*

If you are a cash basis taxpayer, report on Form 1040 all income you received during 1989, no matter when you performed the service.

1989 Foreign Earned Income		Amount (in U.S. dollars)
10 Total wages, salaries, bonuses, commissions, etc.	10	
11 Allowable share of income for personal services performed (see Instructions for Part III, line 11):		
a In a business (including farming) or profession	11a	
b In a partnership (give name, address, and nature of income) _____	11b	
12 Noncash income (market value of property or facilities furnished by employer—attach statement showing how determined):		
a Home (lodging)	12a	
b Meals	12b	
c Car	12c	
d Other property or facilities (specify) _____	12d	
13 Allowances, reimbursements, or expenses paid on your behalf for services you performed:		
a Cost of living and overseas differential 13a		
b Family 13b		
c Education 13c		
d Home leave 13d		
e Quarters 13e		
f For any other purpose (specify) _____ 13f		
g Add the amounts on lines 13a through 13f and enter the total	13g	
14 Other foreign earned income (specify) _____	14	
15 Add the amounts on lines 10 through 12d, line 13g, and line 14 and enter the total	15	
16 Total amount of meals and lodging included on line 15 that is excludable. (See Instructions.)	16	
17 Subtract line 16 from line 15 and enter the result. This is your foreign earned income ▶	17	

Complete Part IV next if you choose to claim the housing exclusion or are claiming the housing deduction. Otherwise, skip to Part V.

APPENDIX "E"

Part IV For Taxpayers Claiming Housing Exclusion AND/OR Deduction

18	Qualified housing expenses for the tax year. (See Instructions.)		18	
19	Number of days in your qualifying period that fall within your 1989 tax year. (See Instructions.)	19		
20	Multiply $21.30 by the number of days on line 19. Enter the result, but do not enter more than $7,775.00		20	
21	Subtract the amount on line 20 from the amount on line 18. (If zero or less, do not complete the rest of Part IV or any of Part VII.)		21	
22	Enter employer-provided amounts. (See Instructions.)	22		
23	Enter the amount from line 17	23		
24	Divide the amount on line 22 by the amount on line 23 and enter the result as a decimal (to two places). (Limited to 1.00.)		24	x .
25	**Housing exclusion.** Multiply the amount on line 21 by the decimal amount on line 24, but do not enter more than the amount on line 22. Also enter this amount on line 35, Part VI ▶		25	

Note: *If the amount on line 21 is **more than** the amount on line 25, complete line 26. Otherwise, skip to Part V if you choose to claim the foreign earned income exclusion.*

26	Subtract the amount on line 25 from the amount on line 21. Enter the result here and on line 40, Part VII. (Complete Part V before Part VII if you choose to claim the foreign earned income exclusion.) ▶		26	

Part V For Taxpayers Claiming Foreign Earned Income Exclusion

27	Maximum foreign earned income exclusion		27	$70,000 00
28	Number of days in your qualifying period that fall within your 1989 tax year. (See Instructions for line 19.)	28		
29	Divide the number of days on line 28 by the number of days in your 1989 tax year (usually 365) and enter the result as a decimal (to two places)		29	x .
30	Multiply the amount on line 27 by the decimal amount on line 29		30	
31	Enter the amount from line 17	31		
32	Enter the amount from line 25	32		
33	Subtract the amount on line 32 from the amount on line 31. Enter the result		33	
34	**Foreign earned income exclusion.** Enter here and on line 36, Part VI, the amount from line 30 or line 33, whichever is less ▶		34	

Part VI For Taxpayers Claiming Housing Exclusion, Foreign Earned Income Exclusion, or Both

35	Housing exclusion from line 25	35		
36	Foreign earned income exclusion from line 34	36		
37	Add the amounts on lines 35 and 36 and enter the total		37	
38	Deductions allowed in figuring your adjusted gross income (Form 1040, line 31) that are allocable to the excluded income. (See Instructions and attach computation.)		38	
39	Subtract line 38 from line 37. Enter the result here and in parentheses on Form 1040, line 22. Next to the amount write "Exclusion(s) from Form 2555." On Form 1040 subtract the amount from your income to arrive at total income on Form 1040, line 23 ▶		39	

Part VII For Taxpayers Claiming Housing Deduction

Note: *Complete this part only if: (1) you entered an amount on line 26, and (2) the amount on line 17 is more than the amount on line 37.*

40	Enter the amount from line 26		40	
41	Enter the amount from line 17	41		
42	Enter the amount from line 37	42		
43	Subtract the amount on line 42 from the amount on line 41 and enter the result		43	
44	Enter the amount from line 40 or line 43, whichever is less		44	

Note: *If the amount on line 43 is **more than** the amount on line 44 and you could not deduct all of your 1988 housing deduction because of the 1988 limitation, complete the worksheet on page 4 of the Instructions to figure how much of your 1988 housing deduction may be carried over to 1989. Otherwise, enter a zero (–0–) on line 45.*

45	Housing deduction carryover from 1988 (from worksheet on page 4 of the Instructions)		45	
46	Add the amounts on lines 44 and 45. Enter here and on Form 1040 to the left of line 30. Next to the amount on Form 1040 write "Deduction from Form 2555." Add it to the total adjustments reported on that line ▶		46	

• U.S. GPO: 1989-0-245-266

APPENDIX "F"

Privacy Act and
Paperwork Reduction Act Notice

Under the Privacy Act of 1974 and the Paperwork Reduction Act of 1980, we must tell you:

• Our legal right to ask for the information and whether the law says you must give it.

• What major purposes we have in asking for it, and how it will be used.

• What could happen if we do not receive it.

The laws covers:

• Tax returns and any papers filed with them.

• Any questions we need to ask you so we can:

Complete, correct, or process your return.

Figure your tax.

Collect tax, interest, or penalties.

Our legal right to ask for information is Interanl Revenue Code sections 6001 and 6011 and their regulations. They say that you must file a return or statement with us for any tax you are liable for. Code section 6109 and its regulations say that you must show your social security number on what you file. This is so we know who you are, and can process your return and papers.

You must fill in all parts of the tax form that apply to you. But you do not have to check the boxes for the Presidential Election Campaign Fund.

We ask for tax return information to carry out the Internal Revenue laws of the United States. We need it to figure and collect the right amount of tax.

We may give the information to the Depaertment of Justice and to other Federal agencies, as provided by law. We may also give it to States, the District of Columbia, and U.S. commonwealths or possessions to carry out their tax laws. And we may give it to foreign governments

because of tax treaties they have with the United States.

If a return is not filed, or if we don't receive the information we ask for, the law provides that a penalty may be charged. And we may have to disallow the exemptions, exclusions, credits, deductions, or adjustments shown on the tax return. This could make the tax higher or delay any refund. Interest may also be charged.

Please keep this notice with your records. It may help you if we ask for other information.

If you have questions about the rules for filing and giving information, please call or visit any Internal Revenue Service office.

This is the only notice we must give you to explain the Privacy Act. However, we may give you other notices if we have to examine your return or collect any tax, interest, or penalties.